

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DORIN FERGUSON,

Petitioner,

v.

Case No. 18-C-1583

RICHARD SCHMIDT,

Respondent.

**ORDER ADOPTING REPORT AND RECOMMENDATION
AND DISMISSING PETITION**

Petitioner Dorin Ferguson, who is in custody awaiting trial in Milwaukee County Circuit Court, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 on October 9, 2018. On October 19, 2018, Magistrate Judge William E. Duffin screened his petition and filed a Report and Recommendation in which he recommends that Ferguson's petition be dismissed. Petitioner filed an objection to the Report and Recommendation on October 29, 2018. For the following reasons, the court adopts Magistrate Judge Duffin's Report and Recommendation in full.

Ferguson asserts that he is unlawfully detained because he was never given a probable cause hearing within 48-hours of his arrest and that he was unlawfully arrested "for some unknown offenses." Pl.'s Pet. at 6, ECF No. 1. Ferguson's petition will be dismissed without prejudice because he has not attempted to exhaust his state court remedies. As explained in Magistrate Judge Duffin's Report and Recommendation, while § 2241(c) does not explicitly require exhaustion, federal courts may "require, as a matter of comity, that such detainees exhaust all avenues of state relief before seeking the writ." *United States v. Castor*, 937 F.2d 293, 296–97 (7th Cir. 1991)

(citing *Baldwin v. Lewis*, 442 F.2d 29, 31–33 (7th Cir. 1971)); *see also Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004). In short, Ferguson’s petition will be dismissed because he has not exhausted his state court remedies. Ferguson’s objection—that he would like to appeal the decision because he didn’t know he had to exhaust his state court remedies first—does not change that fact. As Ferguson’s petition will be dismissed without prejudice, he is free to exhaust his state remedies and re-file his petition if he so chooses.

Accordingly, the court therefore adopts the Report and Recommendation of Magistrate Judge Duffin and orders the petition (ECF No. 1) **DISMISSED without prejudice** so that Ferguson may exhaust his state court and administrative remedies. A certificate of appealability is denied for the reasons recommended and the Clerk is directed to enter judgment forthwith. If Ferguson wishes to appeal, he must file a notice of appeal with the Clerk of Court and request that the Court of Appeals issue a certificate of appealability. Fed. R. App. P. 22.

Dated this 31st day of October, 2018.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court